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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Winfried Bunsmann
Serial No: 10/531,679
Filed: April 15, 2005
For: CABRIOLET VEHICLE
Examiner: Paul A. Chenevert
Art Unit: 3612

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

S I R:

Applicant hereby requests a one-month extension of the original shortened statutory period set by the Notice of Appeal of September 8, 2008. Enclosed is a credit card payment form in the amount of \$130 in payment of the government fee for a one-month extension of time.

12/12/2008 HDESTA1 00000035 10531679

01 FC:1402

540.00 OP
02 FC:1251
130.00 OP

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This appeal is taken from the Final Action mailed March 4, 2008.

Real Party in Interest

The real party in interest in the above-identified application is:

Wilhelm Karmann GmbH
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Germany

Related Appeals and Interferences

There are no related appeals or interferences of which Applicant is aware regarding the above-identified application.

Status of Claims

Claims 3, 9 and 22 have been canceled. Claims 1, 2, 4-8 and 10-21 are pending in the application. Claims 11-17, 20 and 21 contain allowable subject matter. Claims 1, 2, 4-8, 10, 18 and 19 are subject to the present appeal. Claims 1, 2, 4, 5 and 8 stand rejected under 35 U.S.C. 102(b) over US Patent No. 2,768,025 to Spear et al. Claim 1 stands rejected under 35 U.S.C. 102(b) over US Patent No. 6,299,234 to Seel et al. Claims 6 and 7 stand rejected under 35 U.S.C. 103(a) over Spear et al. in view of US Patent No. 5,636,894 to Kinnanen. Claim 10 stands rejected under 35 U.S.C. 103(a) over Seel et al. in view of US Patent No. 6,866,324 to Neubrand et al.

Status of Amendments After Final Rejection

An amendment after final was filed and entered by the Examiner.

Summary of the Claimed Subject Matter

The claimed invention will now be summarized with reference

to the drawings being made by way of reference numerals.

Independent Claim 1

The claimed invention recites a convertible (1) with a roof (2) that is movably supported relative to an automobile body (see page 8, lines 3-4). The roof (2) can be moved in a translatory direction at least nearly horizontally between a closed position, in which a front roof section (5) is supported on and is in mounting connection with a windshield frame (7) (see page 8, lines 18-20, page 9, lines 19-22), and an intermediate position, in which the mounting connection between the roof (2) and the windshield frame (7) is released and in which the front roof section can be swiveled upward in a roof movement that includes at least a rotational component (see page 13, lines 2-5). The translatory displacement (H) of the roof and the roof movement that at least includes a rotational component (8) occur in succession (see page 11, lines 17-19). The roof (2) is rotatably supported on lateral main bearings (8) relative to an automobile body (20) (see page 11, lines 4-7). The main bearings (8) are movable at least nearly horizontally relative to the automobile body (20) (see page 10, lines 18-20, page 17, lines 1-5). The distance (H) of the at

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least nearly horizontal movement is between two and eight centimeters (see page 11, lines 14-16).

Grounds of Rejection to be Reviewed on Appeal

The following grounds are presented for review:

Whether claims 1, 2, 4, 5 and 8 are anticipated under 35 U.S.C. 102(b) over Spear et al.

Whether claim 1 is anticipated under 35 U.S.C. 102(b) over Seel et al.

Whether claims 6 and 7 are unpatentable under 35 U.S.C. 103(a) over Spear et al. in view of Kinnanen.

Whether claim 10 is unpatentable under 35 U.S.C. 103(a) over Seel et al. in view of Neubrand et al.

Argument

The Rejection of Claims 1, 2, 4, 5 and 8

under 35 U.S.C. 102(b) :

In rejecting claims 1, 2, 4, 5 and 8, the Examiner stated the following in the final rejection:

"Regarding claim 1, Spear et al. discloses a convertible with a roof 32 that is movably supported relative to an automobile body, wherein the roof can be moved at least nearly horizontally between a closed position (Fig 1), in which a front roof section is supported on a windshield frame 26, and an intermediate position (Fig 2), in which the mounting connection between the roof and the windshield frame is released and in which the front roof section can be swiveled upward. The front roof section is considered to be the forward portion of the roof in the vehicle travel direction. The roof of Spear et al. has a rotational component (Fig 2) and a translatory displacement (initial movement) and the rotational movement occurs in succession.

As to claim 2, Spear et al. discloses the roof is supported on lateral main bearings 47 relative to an automobile body, wherein the main bearings can be moved at last nearly horizontally relative to the automotive body and that in the rearwardly displaced position of the roof, the front roof section can be swiveled upward about the main bearings.

As to claim 4, Spear et al. discloses the front roof section is mounted on the windshield frame without locks (Col 1 Ln 3-9), and at least one locking device is assigned to the displaceable main bearings (Col 4 Ln 43-48).

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As to claim 5, Spear et al. discloses a positive locking connection can be made between the front roof section and the windshield frame.

As to claim 8, Spear et al. shows the distance of the horizontal displacement is limited to a roof position in which the front roof section can swivel freely upward without danger of collision with the windshield frame. As seen in Fig 1-3, the track 33 has a horizontal upper portion, where the roof disengages the window frame, and an angled portion, where the roof begins its pivoting movement. The angled section is shown aft of the upper horizontal section."

In accordance with the reference to Spear et al., the front roof part is in its totality moveably supported on a lateral guide track. The roof is not rotated about a transverse axis; rather the roof is moved down in its original orientation. In other words, when the roof is opened, the roof is moved only in a continuous downward and rearward movement without being pivoted.

In accordance with the invention, it is important that the front roof part is moved initially exclusively horizontally in order to achieve the release of the locking means from the windshield frame. This horizontal movement takes place for about 2 to 8 centimeters. The roof part is then moved rearwardly from this released position. Consequently, first a translatory movement and then a pivoting movement take place without a combination of these movements.

It is important in this connection that the reference does not have any main posts for pivoting the roof part and that, consequently, the initial rearward movement and the subsequent upward movement are not possible. Rather, in the reference, the entire movement is a translatory movement on a curved track.

Applicant respectfully submits that the claims in the application are not anticipated by the reference to Spear et al. In fact, Applicant believes that the Examiner has not accurately evaluated the reference to Spear et al.

Specifically, it is not correct that the reference discloses a roof which is supported by main bearings and which can be pivoted about the main bearings. Rather, the reference merely provides trolleys 47 with rollers 48. It is not possible at any time to pivot the roof about these trolleys. There is not even a pivoting axis around which the roof could be pivoted.

Thus, it is submitted that the rejection of claims 1, 2, 4, 5 and 8 under 35 U.S.C. 102(b) over the above-discussed reference is in error.

The Rejection of Claim 1 under 35 U.S.C. 102(b):

In rejecting claim 1, the Examiner stated the following in the final rejection:

"Seel et al. discloses a convertible with a roof 2 that is movably supported relative to an automobile body, wherein the roof can be moved at least nearly horizontally between a closed position (Fig 1), in which a front roof section is supported on a windshield frame 5, and an intermediate position (Fig 2), in which the mounting connection between the roof and the windshield frame is released and in which the front roof section can be swiveled upward. The rotational movement is preceded by the translatory movement."

The reference to Seel et al., which was cited by the Examiner in rejecting claim 1 under 35 U.S.C. 102(b), discloses in its totality a pivoting motion of the roof and no translatory motion. This can only be effected by means of a multiple joint arrangement so that even the first lifting of the front roof part from the windshield frame already constitutes an upward component and a movement about a joint, i.e., not a translatory motion as is the case in the present invention. Also, the pivoting movements are superimposed, so that pivoting of the roof takes place from the beginning. In this connection, the principal

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bearing is not movable rearwardly, but stays at its position. The multiple joint arrangement is configured in such a way that the path of movement extends almost horizontally when the roof makes contact with the windshield frame, i.e., not already over the last few centimeters in front thereof. However, this also does not constitute a pure translatory motion. The primary bearing itself is not displaced.

Thus, it is submitted that the rejection of claim 1 under 35 U.S.C. 102(b) over the above-discussed reference is in error.

The Rejection of Claims 6 and 7 under 35 U.S.C. 103(a):

Claims 6 and 7 stand and fall with independent claim 1.

The Rejection of Claim 10 under 35 U.S.C. 103(a):

Claim 10 stands and falls with independent claim 1.

Conclusion

Accordingly, in view of the above considerations, it is Applicant's position that the Examiner's rejections of claims 1,

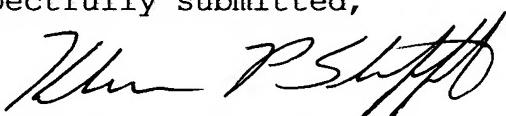
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2, 4, 5, and 8 under 35 U.S.C. 102(b) and his rejections of claims 6, 7 and 10 under 35 U.S.C. 103(a) are in error and should be reversed.

The amount of \$540.00 to cover the fee for filing an appeal brief is being charged as per attached form PTO-2038. Any additional fees or charges required at this time in connection with this application should be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

By



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Dated: December 8, 2008

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450, on December 8, 2008.

By: 
Klaus P. Stoffel

Date: December 8, 2008

Claims Appendix

1. Convertible (1) with a roof (2) that is movably supported relative to an automobile body, wherein the roof (2) can be moved in a translatory direction at least nearly horizontally between a closed position, in which a front roof section is supported on and is in mounting connection with a windshield frame (7), and an intermediate position, in which the mounting connection between the roof (2) and the windshield frame (7) is released and in which the front roof section can be swiveled upward in a roof movement that includes at least a rotational component, wherein the translatory displacement (H) of the roof and the roof movement that at least includes a rotational component (8) occur in succession, the roof (2) being rotatably supported on lateral main bearings (8) relative to an automobile body (20), wherein the main bearings (8) are movable at least nearly horizontally relative to the automobile body (20), and wherein the distance (H) of the at least nearly horizontal movement is between two and eight centimeters.

2. Convertible (1) in accordance with Claim 1, wherein, in a rearwardly displaced position of the roof (2), the front roof section can be swiveled upward about the main bearings (8).

4. Convertible in accordance with Claim 1, wherein the front roof section is mounted on the windshield frame (7) without locks, and at least one locking device is assigned to the displaceable main bearings (8).

5. Convertible in accordance with Claim 1, wherein a positive-locking connection can be made between the front roof section and the windshield frame (7).

6. Convertible in accordance with Claim 5, wherein, for the positive-locking connection, pins (10), which are located essentially in an extension direction of the front roof part (5), are assigned to the front roof section and are configured to fit into complementary recesses (11) of the windshield frame (7).

7. Convertible in accordance with Claim 6, wherein the pins (10) have a conical shape.

8. Convertible in accordance with Claim 1, wherein to open the roof (2), the distance (H) of the at least nearly horizontal displacement in the opposite direction from the direction of travel (F) is limited to a roof position in which the front roof

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section can swivel freely upward without danger of collision with the windshield frame (7):

10. Convertible in accordance with Claim 1, wherein the roof (2) comprises several rigid roof parts (3, 5), wherein a rear roof part (3) extends at least between a belt line (L) and a roof part (5) that is located in front of it in the direction of travel (F) and above a passenger compartment, and wherein the rear roof part (3) has a middle section (S5), which, in the closed state of the roof, lies between lateral main posts (S4) and encloses a rear window.

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Evidence Appendix

N.A.

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Related Proceedings Appendix

There are no related proceedings.